

**WILLIAMSBURG CITY COUNCIL**  
**November 14, 2002**  
**MINUTES**

The Williamsburg City Council held its regular monthly meeting on November 14, 2002, at 2:00 p.m., in the Council Chambers of the Stryker Building.

**ATTENDANCE**

Present were Ms. Zeidler, Messrs. Haulman, Houghland, Scruggs and Tabb. Also present were City Manager Tuttle, City Attorney Phillips, and City Clerk Crist.

Staff Attending: Department Heads Weiler, Yost, Clayton, Nester, Hudson, Serra.

**CALL TO ORDER**

The meeting was called to order by Mayor Zeidler.

**COUNCIL MINUTES**

*Mr. Houghland Moved Approval of the City Council Minutes of October 7 and 10, and Special Meetings of October 23 and 29, 2002. The Motion Was Seconded by Mr. Tabb.*

*Recorded Vote on the Motion:*

*Aye: Haulman, Zeidler, Houghland, Tabb*

*No: None*

*Abstain: Scruggs (he was not on Council at the time of the October meetings)*

**MATTERS OF SPECIAL PRIVILEGE**

**PUBLIC HEARINGS:**

**Proposed Water Rate Surcharge, *Proposed Ordinance #02-28***

Council members received a copy of the advertisement for the public hearing.

Mr. Tuttle asked Mr. Clayton to review the status of the city's water supply.

Mr. Clayton reported that the city is still purchasing water from the City of Newport News and York County. The rainfall has improved the water situation and the reservoir level is now stable. The ground is still soaking up the rainwater, so that there is not the usual amount of storm water run-off. The goal is to get the reservoir as full as possible. He does not want to over-purchase water, but without enough water, the city may have to ration.

Mr. Clayton said that an additional ordinance, Proposed Ordinance #02-33, was being introduced and recommended for passage to repeal the mandatory water restrictions formerly implemented by the Governor. The language of the ordinance also encourages voluntary water conservation. Proposed Ordinance #02-28 further implements a water surcharge for the months of January, February, and March 2003, but has been amended to state that if the city no longer has to purchase water from Newport News, the surcharge will be rescinded. Mr. Clayton and Mr. Tuttle will be closely monitoring the water level situation at the end of this year.

Mayor Zeidler opened the public hearing.

No one wished to speak. The public hearing was closed.

*Mr. Houghland Moved That City Council Approve Proposed Ordinance #02-28, An Ordinance to Adopt An Emergency Surcharge of Fifty Center Per Thousand Gallons of Water, Effective December 1, 2002, and Proposed Ordinance #02-33, An Ordinance to Repeal Ordinance #02-26 Which Implemented Water Use Restrictions in the City of Williamsburg Pursuant to Executive Order #33 of the Governor of Virginia. The Motion Was Seconded by Mr. Tabb.*

*Recorded Vote on the Motion:*

*Aye: Haulman, Scruggs, Zeidler, Houghland, Tabb*

*No: None* (See Adopted Ordinances #02-28 and #02-33)

**VAC #03-02: Vacation of the Center Portion of an Alley Between North Boundary and North Henry Streets, and Northern Portion of an Alley Between this Alley and Prince George Street. The Vacated Portions of These Alleys will be Used for the Construction of the Prince George Parking Garage, Proposed Ordinance #02-31**

Reference for this item was Mr. Nester's report dated November 14, 2002. Mr. Nester explained that this vacation request was necessary for the development of the Prince George Parking Garage. On an overhead map he pointed out how the alley vacations will fit with the properties already acquired for the project. The city now owns all land bordering the portions of the alleys to be vacated. State Code requires a public hearing on the vacation and Council may choose to appoint viewers to review the property after the public hearing if it wishes. Staff recommends that viewers not be appointed because the issues of this case are clear-cut, and Council has already approved the Special Use Permit. The recommendation was that Council approve the Proposed Ordinance for the vacations.

Mayor Zeidler opened the public hearing.

No one wished to speak. The public hearing was closed.

*Mr. Haulman Moved That City Council Approve Proposed Ordinance #02-31, An Ordinance Vacating Portions of Alleys in the Block Bounded by Prince George Street, North Boundary Street, North Henry Street and Scotland Street. The Motion Was Seconded by Mr. Tabb.*

*Recorded Vote on the Motion:*

*Aye: Haulman, Scruggs, Zeidler, Houghland, Tabb*

*No: None* (See Adopted Ordinance #02-31)

**Voluntary Agreement Between York County/City of Williamsburg and Relocation of Portion of Jurisdictional Boundary**

Reference for this item was Mr. Phillips memorandum dated November 6, 2002, which included a copy of the proposed Voluntary Agreement for Annexation and Deannexation Between the County of York, Virginia, and the City of Williamsburg, Virginia. Plats were included showing the boundary to be relocated and the portions of various properties that will shift from one locality to the other if the agreement is adopted by both localities. The agreement must be approved by the Circuit Court and the United States Justice Department under the Voting Rights Act. The relocation will initially benefit the city as far as assessed values are concerned and the land that will be shifted to York County will have good future development potential. Using an overhead map, Mr. Phillips pointed out the properties to be relocated.

Mayor Zeidler opened the public hearing.

**Gilbert Granger, 302 Harrison Avenue, owner of G-Square (Sno-to-Go)**, urged Council to approve the proposed agreement. He said when he brought the suit in the city he had certain goals in mind; to have all of his property in the city, to clarify who was responsible for property protection, to help the city adjust the jagged boundary lines, and he hoped the suit would help the city negotiate the purchase of the Waller Mill Park property. He congratulated Council and Mr. Philips for accomplishing this proposed agreement and urged its approval.

No one else wished to speak. The public hearing was closed.

Mr. Tuttle recommended that Council approve the proposed agreement. York County was also expected to approve the agreement. Council appreciated the work that was done on this matter. The agreement should benefit both localities.

The Mayor thanked Mr. Granger for his lawsuit to help straighten city boundary lines.

*Mr. Houghland Moved That City Council Approve the Voluntary Agreement for Annexation and DeAnnexation Between the County of York, Virginia, and the City of Williamsburg, Virginia, and that City Council Authorize the Mayor to Execute the Agreement. The Motion Was Seconded by Mr. Tabb.*

*Recorded Vote on the Motion:*

*Aye: Haulman, Scruggs, Zeidler, Houghland, Tabb*

*No: None*

## **REPORTS**

### **Monthly Financial Statement**

*The Monthly Financial Report was received and ordered filed.*

### **Monthly Departmental Operating Reports**

*The Monthly Departmental Operating Reports were received and ordered filed.*

Mr. Tuttle reported that information and photographs about the construction of the Prince George Parking Garage will be available on the "What's New" section of the city's website.

Farmers' Market: Mr. Tuttle reported that a one-day holiday market has been proposed to be held on Saturday, December 14.

## **City Manager Reports**

### **2003 Legislative Priorities for the City, Proposed Resolution #02-18**

Reference for this item was Mr. Tuttle's report dated November 7, 2002, which included a copy of the proposed ordinance and list of ten legislative priorities. Mr. Tuttle recommended that City Council adopt the proposed resolution supporting certain state and local legislative issues. Mr. Tuttle noted that a meeting has been scheduled with Senator Norment and Representative Barlow on December 4, 2002, to discuss the city's 2003 legislative priorities.

Mr. Houghland commented that he was appreciative of Ms. Miller's one page formatting of the priorities.

*Mr. Tabb Moved That City Council Adopt Proposed Resolution #02-18, A Resolution Supporting Certain Local and State Legislative Issues. The Motion Was Seconded by Mr. Haulman.*

*Recorded Vote on the Motion:*

*Aye: Haulman, Scruggs, Zeidler, Houghland, Tabb*

*No: None*

(See Adopted Resolution #02-18)

**Rental Housing Registration and Inspection Program, Proposed Ordinance #02-30 and #02-32**

Reference for this item was Mr. Tuttle's report dated November 6, 2002, which included a copy of the proposed ordinance.

The Mayor said Council has been reviewing this item since last May. It is ready for action. Mayor Zeidler said that Mr. Alvin Anderson, Attorney for Residents for Responsible Renters, requested that he be allowed to speak. The Mayor conferred with Council members and they concurred that Mr. Anderson be allowed to speak.

**Mr. Alvin Anderson, Attorney for Residents for Responsible Renters**, said that he represented a group of people who own property in the city of a residential nature and that are leased from time to time. All properties are subject to deterioration over time. Virginia is a Dillon Rule State. He presented text from the Dillon Rule regarding powers expressly granted to a locality by the General Assembly. The city may only exercise those powers granted in express words necessarily or fairly implied, or incident to the powers expressly granted. The city's proposed ordinance is based on Section 36-105 of the State Code. It is the enabling legislation for what is proposed and does not include rental registration. A certificate of compliance is authorized in two areas: areas designated conservation and rehabilitation, or it can be used in an area designated as blighted. It also addresses when inspections are authorized such as termination, selling of the property, or on a specific piece of property, but not more than once a year. He presented power point slides addressing the Dillon Rule, Code of Virginia, the flaws of the proposed ordinance, and suggested solutions (SEE ATTACHED PRESENTATION). He asked that Council consider his comments.

Mayor Zeidler said that Mr. Phillips had addressed the Dillon Rule at the Tuesday work session.

Mr. Phillips stated that Mr. Anderson was most fair in his comments. The State Code addresses many things that a local government can and cannot do, but there are numerous things everyday that local government must do that are not specifically identified in the Code. There are all levels of issues as to whether or not the things that local government does are fairly implied under Dillon as necessary to carry out the things specifically authorized. There are State Supreme Court Cases relative to the Dillon Rule, but the number is relatively small. The proposed ordinance provisions are fairly implied and necessary to implement the provisions of Section 36-105. He could not say it meets the blight line test, because there is not one.

Mr. Phillips said both proposed ordinances could be acted on in concert.

*Mr. Houghland Moved Adoption of Proposed Ordinance #02-30, An Ordinance Amending Chapter 5, Building and Building Regulations, of the Code of the City of Williamsburg, By Adding Article VII, Registration and Inspection of Rental Dwelling Units, and to Delete Any Reference to Initial Inspection Fee, and Proposed Ordinance #02-32, An Ordinance Amending Chapter 5, Building and Building Regulations, of the Code of the City of Williamsburg, By Revising Article II. Administration, Section 5-21 and 5-22. The Motion Was Seconded by Mr. Haulman.*

Mayor Zeidler proposed an amendment to make both the initial inspection fee and subsequent inspections fees \$35.00. Mr. Haulman proposed an amendment to delete subparagraph Section 5-241 (a) (6) "Any other information, deemed by the code compliance administrator to be necessary to administer this article." He was of the opinion that if staff felt other information was necessary, they should come back to Council. Mr. Houghland accepted the amendments from the Mayor and Mr. Haulman.

During discussion, Mr. Phillips replied to Mr. Scruggs that it was often difficult to know who is responsible for maintenance. Sometimes law prevails and at times, the information is specified in the lease. If code enforcement officials cannot sort it out, the courts will have to decide.

Mr. Scruggs voiced his observations based on discussions with Council and landlords:

1. This code is not going to make good neighbors, but it will help; you can't make things happen.
2. Some people have not invested in their property, to keep it up to basic code. Therefore the consequences economically for them will be the greatest.
3. This ordinance is one tool of many.
4. His goal, and the goal of Council is to ensure the vitality and integrity of city neighborhoods.
5. This ordinance is not perfect, but he was convinced this is the best for now. It has been thoroughly reviewed by the City Attorney.
6. It is proposed to stop the deterioration of neighborhoods.

*Recorded Vote on the Motion:*

*Aye: Haulman, Scruggs, Zeidler, Houghland, Tabb*

*No: None* (See Adopted Ordinances #02-30 and #02-32)

Mayor Zeidler said the proposed ordinance would take effect July 1, 2003.

Mr. Tuttle said the guidelines will be available for property owners and information will be available about registration.

### **City Attorney Report**

#### **Lodging Guest Registration, Proposed Ordinance #02-29**

Reference for this item was Mr. Phillips report dated October 21, 2002, which included a copy of the proposed ordinance. Mr. Phillips explained that the Colonial Narcotics Task Force asked that localities pass this ordinance requiring keepers of transient lodging facilities to obtain certain information from their guests. It is designed to assist police in criminal investigations concerning drugs, fugitives, and suspected terrorists. James City County has already enacted its ordinance, and area hotels and motels are in agreement with this proposal. Chief Yost was available to answer questions.

*Mr. Haulman moved that City Council Adopt Proposed Ordinance #02-29, An Ordinance to Amend Article I of Chapter 10 of the Williamsburg Code by Adding Section 10-4, Lodging Guest Registration; and Section 10-5, False Registration by Guests. The Motion was Seconded by Mr. Houghland.*

*Recorded Vote on the Motion:*

*Aye: Haulman, Scruggs, Zeidler, Houghland, Tabb*

*No: None* (See Adopted Ordinance #02-29)

### **City Charter Amendment, Appointment of City Council Member**

Reference for this item was Mr. Phillips report dated November 6, 2002. Mr. Phillips reviewed the information provided in his report to Council. Council asked him to explore the possibility of amending Chapter 8 of the City Charter which provides that within 60 days of a council seat being vacant, Council shall appoint a successor to fill that unexpired term.

Mr. Phillips stated that Council had options. Council could leave the Charter as it is, and has been since the 1930s. If Council wants to change the Charter, they could delete the portion of Section 8 leaving the city's Charter silent as to what is to be done. Then according to the Virginia Code, a special election would be held to fill a vacancy, but Council would still have to appoint to fill the vacancy until the election. If Council chooses to change the Charter, a public hearing would be required before presenting the charter change bill to the General Assembly for approval. He was unsure of the deadline for doing so before the 2003 General Assembly.

Mr. Tuttle said the city might have enough time to do so in December. The city's General Assembly representatives have been informed that the city is contemplating a change.

Mayor Zeidler said if Council had chosen to follow State Code, an election would be held at the next Councilmatic election, or the following May 2003, but Council would still appoint to fill the vacancy in the interim. The city would incur the cost of a special election.

Mr. Houghland said he would like to have a public hearing in December on options to streamline the process.

Mr. Phillips and Council discussed the results of striking the City Charter Section regarding the appointment process, thus following general law, or waiting for another year. Mr. Phillips said that he was not aware specifically of what other localities do, but most follow the general law.

Mr. Scruggs would like to have more information on the cost of a special election and have the benefit of public debate.

Mr. Haulman favored holding a public hearing to hear from citizens and make a decision afterward, but there was not pressing need to do it now.

*Mr. Houghland Moved That Council Ask the City Attorney to Prepare An Ordinance to Strike the Current Ordinance Provision from the City Charter Section 8 Regarding Appointment to Council Vacancy, and That the City Appointment Process Would Conform To State Code. The Motion was Seconded by Mr. Haulman.*

*Recorded Vote on the Motion:*

*Aye: Haulman, Scruggs, Zeidler, Houghland, Tabb*

*No: None*

Council directed Mr. Tuttle to ask the Voter Registrar to provide information regarding the cost of a special election, and to be present at the December meeting.

**Unfinished Business**

Appointments to Boards and Commissions--None

**New Business**

**Goals and Initiatives for the Biennium 2002-2004**

Reference for this item was Mr. Tuttle's report dated November 7, 2002, which included a copy of the revised document. Mr. Tuttle noted that under the goals of Character of the City, an initiative had been added regarding Litter Awareness, and under Economic Vitality, the Industrial Development Authority's two recommendations had been added regarding botanical garden feasibility and alternative funding for tourism marketing. Mr. Tuttle recommended adoption of the Goals and Initiatives.

Mr. Scruggs congratulated city staff for this document, which he will support. He asked that his comments regarding the Goals and Initiatives be attached to the record of this meeting. Since he was appointed after the development of the document, he hoped that Council would consider, discuss, and perhaps consider the thoughts for inclusion into the G&I at a future time. (SEE ATTACHED).

Mr. Tuttle said the Goals and Initiatives would be put into a more attractive format.

*Mr. Haulman Moved That City Council Adopt the Goals and Initiatives for the Biennium 2002-2004, As Revised. The Motion was Seconded by Mr. Tabb.*

*Recorded Vote on the Motion:*

*Aye: Haulman, Scruggs, Zeidler, Houghland, Tabb*

*No: None*

Update: Transfer of Heritage Inn to Timeshare Property: Mr. Tuttle asked Mr. Walentisch to update Council on the recent change in ownership of the Heritage Inn and the affect on the elderly citizens that live there.

Mr. Walentisch said that the city is responsible for the health, safety, and welfare of its elderly. He reported that a meeting was held with the residents on November 13 to help with the transition. Security deposits and interests will be refunded to help with relocation, moving assistance will be provided, their last month of rent will be free, the Human Services Department will be involved to assist residents with special needs, and leases will be extended to January 31. Mr. Walentisch is in contact with the Manager at the Heritage for progress reports and will assist whenever possible.

Mr. Tabb attended the meeting and was impressed with the management's treatment of the residents. They will work with the residents through the holiday season.

Council was appreciative of Mr. Walentisch's work.

### **Extension of Agreement—High Street**

Mr. Tuttle reported on the conclusion of the study period in the original March agreement with Creston for the High Street property. Construction is planned for mid-2004. Lerner is still very enthusiastic about this project and has been working hard on obtaining leases. This modification agreement will extend the study periods in four installments through calendar year 2003, with specific performance milestones along the way, with the plan to have the Site Plan submitted the end of 2003. Construction would begin in mid-2004. He recommended approval of the agreement and that the City Attorney be authorized to make nonsubstantive changes, and that the section on Treyburn Drive be brought into compliance with the rest of the agreement.

Mr. Phillips explained that the main thing with this agreement is that the time frame is moved ahead a significant amount of time. The purchaser is making commitments, in that once the city has obtained the additional properties it needs, if the purchaser wants out of the agreement, the city would retain one-half of the deposit. He addressed the provisions concerning meeting the closing date, termination, and extension. It is a realistic extension of time frames.

Mr. Tuttle said Lerner asked for the extension to allow the city time to obtain the land it needs, because the Treyburn Drive schedule has slowed, and because of the economic times. Lerner has spent a lot of time and effort on this project.

*Mr. Haulman Moved That City Council Approve the First Modification Agreement with the Provision that the City Attorney Be Authorized to Make Nonsubstantive Changes and Such Changes As Necessary Regarding Treyburn Drive. The Motion Was Seconded by Mr. Houghland.*

*Recorded Vote on the Motion:*

*Aye: Haulman, Scruggs, Zeidler, Houghland, Tabb*

*No: None*

### **OPEN FORUM**

Mayor Zeidler opened the session.

**Mr. William Mettler, owner of condominium at 105 C Lake Powell Road, addressing the rental housing inspection and regulations,** stated he was not objecting too much about what was passed today. He was out of town and missed speaking at the work session. He has reviewed the proposed ordinance and could have argued many reasons why the regulations should not have passed. The ordinance reflects badly on the city for over-control. He noted that his condo property is not in one of the conservations districts. In a condominium complex, neither owners nor tenants could make exterior corrections or changes because they do not own the grounds or exterior, and all that would be needed on file would be the name of the owner. The manager of the association is the only one that can approve changes. He suggested the ordinance should be adjusted for condominiums.

**Jared Brown, 110 Brookwood Drive, James City County,** was not previously aware of the rental regulations and inspection program. He thought the inspections would be an invasion of privacy. Although he was not a city resident, he was a student at the College, and may live in the city in the future.



Mr. Phillips said if tenants occupy the property, the tenants would have to agree to allow the inspection, unless otherwise agreed with the owner. The only way a government representative could go into a residence without permission from the tenants would be with a search warrant for cause. This ordinance will not permit people to come to someone's home and force their way in.

No one else wished to speak.  
The session was closed.

### **CLOSED SESSION**

Mr. Houghland Moved that City Council go into Closed Session pursuant to Section 2.2-3711 of the Code of Virginia for the purpose of discussing one property matter per subparagraph 3 regarding acquisition of property for water shed protection of which discussion in an open meeting would adversely affect bargaining or negotiation strategy of public body. The Motion was Seconded by Mr. Tabb.

Recorded Vote on the Motion:  
Aye: Haulman, Zeidler, Houghland, Tabb  
No: None

The meeting adjourned at 3:33 p.m. (Mayor Zeidler called a five-minute recess.)

At 3:55 p.m., Council met in Open Session.

Mr. Houghland Moved the Certification of Closed Meeting. The Motion was Seconded by Mr. Haulman

Recorded Vote on the Motion:  
Aye: Haulman, Scruggs, Zeidler, Houghland, Tabb  
No: None

### **CERTIFICATION OF CLOSED MEETING**

Date: November 14, 2002

Motion: Mr. Houghland, Second: Mr. Tabb

WHEREAS, the City Council of the City of Williamsburg has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by the City Council that such meeting was conducted in conformity with Virginia Law.

NOW, THEREFORE, BE IT RESOLVED that the City Council of Williamsburg hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed session were heard, discussed or considered by the City of Williamsburg.

**VOTE:**

Aye: Haulman, Scruggs, Zeidler, Houghland, Tabb

No: None

Absent During Vote: None

Absent During Meeting: None

**Open Meeting**

Mr. Houghland suggested some action by Council in recognition of Mr. Peter A.G. Brown's service to the city.

Mr. Tuttle updated Council on the status of watershed property commercial developments in the vicinity of Wal-Mart.

The meeting adjourned at 4:00 p.m.

Approved: December 12, 2002

Shelia Y. Crist, Clerk of Council

Jeanne Zeidler, Mayor